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SUNDAY BLUE LAWS.

Now that the Eighteenth Amendment has been adopted and inscribed on our statute books, the hordes of reform, emboldened by their success, seek for new worlds to conquer; and it may be said that these gentlemen of conscripted vision never have to look very far for the majority of us are always doing something that we really should not do, things which grieve these good men sorely and which they know will bring us and our country to utter ruin unless stopped in accordance with their advice. As a result we are threatened with a Sunday as blue and cheerless as the reformers and their lobbyists can bring to pass.

The machinery which turned out such a bright and shining article in the case of prohibition is to be duplicated, with perhaps the addition of a new part here and another there to meet the different circumstances involved, and the motive power, supplied in the former instance by the prohibitionists, will issue this time from a new engine of reform.

The officers of the new organization have not disclosed the extent of their program and so it is hard to say how far they intend to go in their attempt to have us all conform to their idea of Sunday observance, but one of them is reported to have mentioned compulsory attendance at Sunday school for children. We should feel inclined to smile at the madness of this good man were it not for the fact that he and his kind are doing most of the smiling at present.

The Sunday reformers however do mean business, and it remains to be seen what we, of the easy going and long suffering majority, shall be ordered to do and not to do of a Sunday, as the result of their machinations.

And what will be the attitude of the courts toward this next program of reform? Will they uphold new laws which may

be passed to this end? And will they enforce a stricter observance of the old laws, providing for an idle Sunday, which it is believed are already in existence in all of the states except California and Oregon?

In order to form some idea of what the courts may do let us see what the courts have done in the past as regards the same question. And at this point we desire to commend to the reader the able and comprehensive discussion of the validity of Sunday laws in "The Law of Sunday" by James T. Ringgold, and to acknowledge our indebtedness to that book for some of the arguments advanced and many of the citations contained in this article.

It may be said in a general way, that, with a few exceptions, the laws providing for the observance of Sunday by an enforced idleness have been upheld by the courts throughout the Union, although one examining to-day the opinions in many of these cases is little convinced of the strength of the arguments set forth therein.

Such statutes have been attacked as violating the federal constitution, as interfering with the rights of property, and last but not least as infringing the religious liberty which in one form or another is guaranteed by most state constitutions.

In this connection it might be of interest to note the novelty of an argument advanced in defense of a Jew, who, in the case of *Com.* v. *Wolf*, (1817) 3 Serg. & R. (Pa.) 48, was charged with the violation of Sunday observance laws by reason of his having engaged in worldly business on that day. He contended that he was compelled to be idle two days a week, since he was bound to observe both the Jewish Sabbath and the Christian Sunday; wherefore, having only five remaining days in each week on which to toil, he was unable to comply with the injunction of the fourth commandment, which he interpreted as demanding six days of labor in every week.

One regrets that the ingenuity of the man failed to prevail, but it must be said that the arguments of the court in supporting the act are scarcely more convincing than those of the defendant. The statute was upheld because, said the court inter alia, it is impossible to administer the affairs of government without teaching the people to revere the sanctity of an oath

and to look to a future state of rewards and punishments for the deeds of this life, which must be done by reminding them of their religious duties at stated periods. This argument is neither better nor worse than many others which have been uttered by the courts in their support of the so-called Sunday laws.

Although we look askance at any union of church and state and in spite of the presence in most state constitutions of a guaranty of religious liberty, some of the courts in discussing the various Sunday acts have not hesitated to lay much stress on what they term the holy nature of the day. It has been spoken of as "consecrated" (*Kilgour* v. *Miles,* (Md.) 6 Gill & J. 268, a case involving Sunday but not "blue laws); a day clothed by the law "with peculiar sanctity" (*Com.* v. *Jeandelle,* 3 Phila. (Pa.) 509, 16 Leg. Int. 364). This leads one to ask whence comes this legislative authority to sanctify or consecrate a day?

Other decisions seem to hold that the legislatures in passing the acts requiring Sunday observance were merely recognizing or conforming a divine law, already in existence. So in *Johnston* v. *Com.* (1853) 22 Pa. St. 102, it was said that the day was "set apart by divine command and human legislation as a day of rest," the court also remarking: "But we have no right to give up this institution. It has come down to us with the most solemn sanction both of God and man." To the same effect is *Stockden* v. *State,* (1856) 18 Ark. 186.

It has been convincingly argued that the legislature in forbidding work on Sunday as a "desecration" thereby declares a certain thing to be sacred and consequently undertakes ecclesiastical functions which are purely a matter of religious belief; or granting that it is merely recognizing a divine law the legislature is applying "civil authority to the enforcement of religious dogma."

That such was the attitude of the legislatures and of the courts in interpreting the statutes can scarcely be doubted after reading the decisions which speak of the day as one on which "the people may devote themselves to religious and pious exercise" (*Conn* v. *Teamann,* 1 Phila. (Pa.), 460, 10 Leg. Int. 167), "a religious institution held in high reverence

by great numbers of their fellow citizens, a civil institution which the state has already cherished" (*Com.* v. *Naylor,* 34 Pa. St. 86); a "day which by our law is dedicated to the duties of religion" (*State* v. *Eskridge,* (Tenn. 1852, 1 Swan.) 413). The Sabbath is time and again emphasized as an institution of Christianity, which the courts simultaneously assert is part of the common law, adopted by us from England, and warning is given of great disaster which must follow any failure to uphold a strict observance of the day. A Pennsylvania court said: "Sunday is a part of Christianity. Upon its peaceful observance Christianity in a great measure depends for its support. Destroy this day, and a revolution of the most astounding character is produced. Whatever conclusion may be arrived at upon the evidence, we cannot assert as law a principle which must lead to the most disastrous results, which must shake Christianity itself." *Com.* v. *Jeandelle,* (1859) 3 Phila. 509, 16 Leg. Int. 364. Our faith in Christianity makes us loath to accept the statement of the court. We refuse to believe that Christian principles depend in the slightest degree on any particular form of Sunday observance. To argue otherwise is to belittle Christianity, which has managed to survive many centuries without the all important protection of Sunday laws. There are other decisions of the same tenor, but when courts resort to such rhetoric we think they do "protest too much." There must be a dearth of sound argument when an opinion must be supported by such unwarranted prognostications. And so as an element of Christianity, a part of the common law, the Sunday acts have been held not to be in conflict with the constitutional guaranties of religious liberty. There are some opinions to the contrary, opinions not lacking in strength, though in the minority. In *Thomasson* v. *State,* 15 Ind. 449, it was held that a Sunday law was unconstitutional if it was "for the protection or enforcement of that day as an institution of the Christian religion." And it was said of a similar law in Alabama that it could not "be justified upon the grounds that such abstinence is enjoined by the Christian religion." *Frolickstein* v. *Mobile,* (1867) 40 Ala. 725.

In a consideration of the biblical authority for an idle Sun-

day it has been well pointed out that the rest of the Creator on the seventh day of creation, resulting in his blessing and hallowing of the day, could have had no result on man at that time, since he had not yet been cast out of the Garden of Eden and had not known labor; and moreover that when he was cast out he was sentenced to work all the days of his life, apparently including the Sabbath. Hence the sanctification of the day did not imply idleness. And since the abstention from labor was the only form of observance prescribed for the seventh day, abstinence from all forms of recreation could not be imported thereby and it was so interpreted by the Jews, for whom indeed this observance of Sabbath served as a mark of distinction from other peoples.

And where can be found the basis for the observance of the day as an institution of Christianity? Indeed the early Christians were frequently bidden to have regard for the essentials and not for the outward manner of things, and the Sunday as we known it is the creation of a sect which looked with scant favor on the holy days celebrated by other Christian sects. So while the earlier cases and indeed some of a later date placed their support of the Sunday laws on the basis of religion and while such arguments might be used in a few cases even to-day, it is probable that any question arising at the present time in regard to the validity of the statutes would resolve itself into a discussion of the extent of the state's police power; of the right of the law making body to provide for the physical welfare of the members of the community, by enforced Sunday idleness.

It is sometimes said that the observance of a day of rest is necessary to the physical well being of the individual and occasionally it seems that it is the community which in some vague and undefined manner is the gainer by a cessation of all human activity laborious or otherwise on the first day of the week. So it was said in *Landers* v. *Staten Island R. Co.*, (1872) 13 Abb. Pr. N. S. (N. Y.) 338, that "the evident object of the statute was to prevent the day from being employed in servile work, which is exhausting to the body, or in merely idle pastime, subversive to that order, thrift and economy, which is necessary to the preservation of society." And a par-

ticularly good example of reasoning on the same line is to be found in *Lindenmuller* v. *People,* (1861) 33 Barb. (N. Y.) 548, wherein the court said: "It is a law of our nature that one day in seven must be observed as a day of relaxation and refreshment if not for public worship. Experience has shown that the observance of one day in seven as a day of rest is of admirable service to the state considered merely as a civil institution. We are so constituted, physically, that the precise portion of time indicated by the decalogue must be observed as a day of rest and relaxation, and nature, in the punishment inflicted for a violation of our physical laws, adds her sanction to the positive law promulgated at Sinai." No proof having been offered to support the court's calculation of the exact period needed for physical refreshment we may question its conclusion in this matter.

If the basis for upholding these laws is the physical welfare of the citizens, why do the acts of so many states by forbidding sports and games on Sunday prohibt the simplest and most efficacious measures in the matter of physical and mental rehabilitation? And if that is the object of the Sunday laws its provisions are about as much to the point as the well-known injunction given by the old lady to her daughter when requested for permission to go swimming. The public must be physically refreshed but it is forbidden to take the most obvious means to that end, namely sports, games and amusements.

There have been many peoples who have not taken one day in seven as a day of rest; there are many peoples to-day who do not take their Sunday "straight" as we do, who enjoy the benefits of that dark, iniquitous institution, a continental Sunday, which is quite in the teeth of our Sunday laws and yet it is never attempted to show that these peoples are physical weaklings;—indeed they have lately given potent evidence to the contrary. Nevertheless the courts one after another assert with varying degrees of insistence that one day of idleness in seven is a necessity based on natural law. And with the same disregard for proof or evidence we find it judicially asserted that an idle Sunday is not only a beneficent institution for the individual but for society as well. See for example

the following declaration in *Lindenmuller* v. *People,* (1861) 33 Barb. (N. Y.) 548: "The stability of government, the welfare of the subject, and the interests of society have made it necessary that the day of rest observed by the people of a nation should be uniform and that its observance should be to some extent compulsory." It is suggested by the way that apropos of Sunday laws the court did well in the foregoing sentence to use the word "subject" instead of citizen.

So we find that statutory provisions for Sunday enforcement have been generally upheld, sometimes on a religious basis, sometimes as a police measure and sometimes on both grounds. And yet when all is said and done it must be obvious that such statutes rest on a religious basis; it was a religious consideration which caused them to exist, and their support on the ground of personal and communal welfare is an afterthought which will not bear minute inspection.

In a recent work of fiction, denouncing the failure of men to base their thought and speech, especially on social and economic subjects, on fact and reason, it is suggested that people need a legal training in order that their minds may function efficiently; that they may establish more readily the truth or falsity of things. This is well deserved recognition of a profession which is not the daily recipient of flattery. Since it is indeed the case that in the main the law is based on proof and reason, what explanation can be given for the wild sweeping assertions made by courts in their decisions on Sunday laws, statements such as those cited throughout this article, which are obviously not the result of reason and proof but which are utterly foreign to the exact science of the law? Has not the law been influenced by a particular kind of religious prejudice: a thing which it outwardly repudiates?

And now the Sunday reformers threaten us with more stringent enforcement of the statutes, with the passage of new acts and possibly with another amendment of the federal constitution. They have no qualms of conscience about the violation of personal liberty. They honestly admit as much. And like their successful predecessors they allege that most of the ills with which society is afflicted will fold their tents like the Arabs and as "silently steal away" if only they are allowed to dictate and enforce our Sunday behavior. Crime waves, Bol-

shevistic tendencies and the need for jails will disappear if only we hearken to them and their band of supporters. We have heard this particular strain of wisdom before and we shall hear it again from the next body of reformers and the next, regardless of the nature of their cure-all. And it possesses just as much truth in the mouth of one reform element as in that of another.

Truth and bigotry do not go hand in hand. If the law is to reflect the wisdom of human experience it must be free from the influence of religious superstition and prejudice. Our state constitutions guarantee religious liberty, but religious liberty is not to be had even to-day without a struggle. Other countries have similar conflicts between parties which are clerical and anti-clerical: the subjects of conflict may differ from ours, but the religious source does not. And reformers, who make up in ardor what they lack in breadth and who are of the same stamp as their successful brothers who pharisaically proclaim themselves to be of the moral element of the community, will not, as remarked before, quail and hesitate before a little thing like a constitutional guaranty. This of course calls for the trite remark that eternal vigilance is the price of liberty.

And if the Sunday reformers "get" us what are the prospects of future Sundays? Perhaps we can get a hint of what we may be permitted from the opinion of the court in *Johnston* v. *Com.*, 22 Pa. St. 102, wherein the defendant was charged with driving his omnibus on Sunday contrary to the provisions of the statute. The court in speaking of certain forms of Sunday recreation which might be within the act said that one who was an invalid or who had been immured for six days within the close walls of a city, requiring a ride into the country as a means of recuperation, might lawfully use a horse and carriage for that purpose. Continuing the judge said: "Equally lawful is the employment of the same means to go to the church of one's choice or to visit the grave of the loved and the lost, to pay the tribute of a tear."

Are we to be relegated to the wild revelry of cemetery visiting and tear dropping as a Sunday diversion in order that thereby we may be refreshed and invigorated for the week's work? *Law Notes.*